

EXHIBIT H
TO
LAVERNE DECLARATION

Securities and Exchange Commission
Division of Enforcement



Enforcement Manual

Office of Chief Counsel

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Communications Privacy Act of 1986, among other requirements. These statutes are discussed in [Section 4](#) of the Manual.

3.3.2 No Targets of Investigations

Unlike the grand jury process in which targets of an investigation are often identified, the SEC investigative process does not have targets. Thus, the SEC is not required to provide any type of target notification when it issues subpoenas to third parties or witnesses for testimony or documents in its nonpublic investigations of possible violations of the federal securities laws. The Supreme Court, in *SEC v. O'Brien*, 467 U.S. 735, 750 (1984), noted that “the imposition of a notice requirement on the SEC would substantially increase the ability of persons who have something to hide to impede legitimate investigations by the Commission.” Citing the SEC’s broad investigatory responsibility under the federal securities laws, the Court found no statutory, due process, or other standard regarding judicial enforcement of such subpoenas to support the proposition that notice is required.

Although some parties involved in investigations eventually may be named as defendants or respondents in subsequent litigation, the SEC does not have targets of its inquiries or investigations.

3.3.3 Voluntary Telephone Interviews

3.3.3.1 Privacy Act Warnings and Forms 1661 and 1662

Basics:

- The Privacy Act, 5 U.S.C. § 552a, requires, among other things, certain disclosures to individuals from whom the SEC’s staff solicits information.
- When the staff contacts a person to request a voluntary telephone interview, before asking any substantive questions, the staff should provide an oral summary of at least the required Privacy Act information described below.
- The Privacy Act requires that the staff provide the following information:
 - That the principal purpose in requesting information from the witness is to determine whether there have been violations of the statutes and rules that the SEC enforces.
 - That the information provided by members of the public is routinely used by the SEC and other authorities, to conduct investigative, enforcement, licensing, and disciplinary proceedings, and to fulfill other statutory responsibilities.
 - That the federal securities laws authorize the SEC to conduct investigations and to request information from the witness, but that the witness is not required to respond.
 - That there are no direct sanctions and no direct effects upon the witness for refusing to provide information to the staff.